IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 371 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDO NIPPON CHEMICAL CO. LTD.

Versus

INDU NISSAN OXO CHEMICAL INDUSTRIES LTD.

Appearance:

1. Civil Revision Application No. 371 of 2003

MR MC BHATT for Petitioner No. 1

MR PR NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/02/2004

ORAL JUDGEMENT

#. Rule. Mr.Nanavati waives service of rule for the respondent.

#. The petitioner is the original defendant of Regular Civil Suit No.762 of 2000 which is pending before the learned Civil Judge (Senior Division), Vadodara. In the aforesaid suit, the trial Court passed the order by which the plaintiff was directed to pay deficit court fees. Mr.M.C.Bhatt, learned advocate argued that the trial Court passed the composite order asking the plaintiff to pay deficit court fees as well as rejecting his application for interim injunction which was submitted under Order 39 of the Civil Procedure Code ("the Code" for short). Mr.Bhatt submitted that against the order passed by the trial Court dismissing the interim injunction application, the original plaintiff has preferred Appeal from Order under Order 43 of the Code which is pending before the District Court, Vadodara. The present petitioner, thereafter, submitted an application before the trial Court at Exh.31 by which it was prayed that since the plaintiff has not paid court fees within the stipulated time, the suit be dismissed. The trial Court, however, refused to pass any order on the ground that till Misc. Civil Appeal is decided, no order is required to be passed below Exh.31. It is the aforesaid order of the trial Court which is under challenge in this civil revision application.

#. Mr.Bhatt, learned counsel vehemently submitted that so far as the appeal pending before the District Court is concerned, the same is filed under Order 43 of the Code and so far as the order by which the plaintiff was asked to pay the deficit court fees is concerned the said order is not the subject matter of the aforesaid appeal.

#. Mr.Nanavati for the respondent - original plaintiff submitted that it is true that the appeal is preferred under Order 43 of the Code only against the order of the trial Court refusing the interim injunction. He, however, submitted that the plaintiff company is before the BIFR, and, therefore, at the relevant time, the deficit court fees could not be paid by the plaintiff.

#. After hearing both the sides, I am of the opinion that so far as Exh.31 is concerned, it is entirely different application altogether and is not dependant upon the outcome of the Misc. Civil Appeal No.252 of 2000. The scope of both the proceedings is different altogether. The trial Judge is, therefore, not right in not disposing of the application Exh.31 on its own merits as the decision on the appeal has nothing to do with the decision on the application Exh.31 which is submitted by the original defendant. Under the aforesaid

circumstances, the trial Judge is directed to decide the application Exh.31 which is given in Regular Civil Suit No.762 of 2000 on its own merits and may dispose of the same in accordance with law after hearing the concerned parties. The said application Exh.31 be decided expeditiously and in any case by 15.3.2004.

#. At this stage, Mr.Nanavati submitted that the plaintiff is now able to pay deficit court fees for which he has prayed that some extension may be granted. However, such request cannot be considered by this Court in the present proceedings. If any such prayer is made before the trial Court, it is for the trial Court to decide the same in accordance with law. It is clarified that, this Court has not expressed any opinion on this point.

#. In the aforesaid circumstances, this civil revision application is allowed. The order below the application Exh.31 is quashed and set aside. The trial court shall proceed with the application Exh.31 on its own merits and decide the same within the stipulated time. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(P.B.Majmudar,J)
(pathan)